



## Refugee rejection is more complex than a soundbite: why Tamil family should stay

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Home Affairs Minister Dutton has repeatedly defended his decision not to exercise discretion in the case of the Tamil couple Priya and Nades and their two Australian-born daughters by deferring to the integrity of the legal system that has denied them refugee status.

Yet the complexity of refugee determinations cannot be reduced to a **soundbite**. Legal decisions about refugee status are not an inevitable reflection of the truth or merits of a person's asylum claims. They are made in the context of a legal system that has been deliberately set up to accelerate asylum decision-making, to deny access to legal advice to people seeking asylum and to limit the legal options of those who have arrived by boat.

The case of this Sri Lankan family has rightly captured public attention since they were forcibly taken early last year from their home in **Biloela**, the Central Queensland town that has embraced them. On Wednesday, the Federal Court extended an injunction preventing the family's deportation - until at least Friday - because one of the daughters, two-year-old Tharunicaa, has never had her claims to protection assessed. There are serious concerns that the media attention may in fact put the family at further risk if they are forcibly deported.

The government has repeatedly defended its decision not to intervene to allow the family to stay by deferring to the legal decisions that Priya and Nades are not owed protection.

Since 2014, Australia's refugee status determination system has discriminated between two groups of asylum seekers: people who have arrived by plane and people, like Priya and Nades, who have arrived by boat. Asylum seekers who arrive by boat are only entitled to have their claims assessed through an inferior and "on paper only" review process by a body known as the Immigration Assessment Authority.

The IAA is prohibited from considering any "new evidence" unless restrictive criteria apply. While people who arrive in Australia by plane can apply for a permanent protection visa, people who have arrived by boat can only apply for temporary protection visas of three or five years.

Priya's case vividly illustrates the flawed nature of this process. She did not have access to legal advice consistently throughout the process of applying for a Safe Haven Enterprise Visa. Her interview with the department was conducted by phone, rather than in person, when she was eight months' pregnant and the day after she had been in hospital for a migraine. With Priya in **Biloela**, her migration agent in Sydney and the department decision-maker and interpreter in Brisbane, the connection to her agent dropped out. The transcript reveals the disjointed effect of this.

Delegate: Right, okay ???, are you there? I have a feeling that your representative has dropped out. Do you want me to try and contact him again? ??? I don't know [indistinct] why it would have dropped out. [Temporary sound interruption.] Migration Agent: So it dropped out just at the point where you were saying, "what do you mean torture?" Then I didn't hear any more after that. Delegate: Right, well, we can repeat the whole interview if you like.

Priya's lawyers have since said she did not fully understand the interpreter nor was she able to assess if he was correctly interpreting her words. While the Federal Circuit Court judge dismissed this as a reason for ordering a new decision, it should raise concerns about how refugee status determination hearings are conducted.

Our research has highlighted that between 2015 and 2019, the IAA refused to find a person to be a refugee in 87 per cent of cases, including in more than 90 per cent of all protection claims from Sri Lanka. In contrast, the former

Refugee Review Tribunal refused to find a person to be a refugee in about 65 to 70 per cent of appeals.

This shift shows that the current high rate of refugee rejections is more the product of the inferior review system that applies only to people who have arrived by boat than the quality of the asylum claims themselves. As well, there is no longer funding for legal advice for those arriving by boat and community legal centres are operating with an overwhelming backlog of cases and in a funding crisis.

While Dutton claims that the courts including the High Court have held that the family are not refugees, this misrepresents the legal process. Appeal courts do not assess if a person qualifies for refugee status, or hear new evidence. They only determine if the original decision contained any narrowly defined legal errors. While some IAA decisions have been overturned, these are the exception rather than the rule.

The minister should immediately exercise his wide discretionary powers to end the cruelty and trauma inflicted on this family and allow them to go home to **Biloela**. Their case illuminates the thousands of other people who have been failed by a flawed refugee assessment system, geared towards fast-tracking refugee claims and punishing asylum seekers who arrive by boat.

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